

Message

From: Green, Jamie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=87F3C708AB614C0AB8F4B553AAC9BD0D-GREEN, JAMIE]
Sent: 4/13/2019 5:35:41 PM
To: Creger, Tim [tim.creger@nebraska.gov]
CC: Weekley, Erin [weekley.erin@epa.gov]
Subject: RE: AltEn DDG wetcake question

Hey Tim – doesn't look like I got back to you on this – but yes I will follow-up. Our early research with counsel here seem to come to the same conclusion you and I had. We will follow-up with OECA and try to get it sorted out and get back to you ASAP. I'm copying Erin Weekly as will be out some next week and know she will keep it rolling. We'll see if we can catch OECA Monday.

From: Creger, Tim <tim.creger@nebraska.gov>
Sent: Friday, April 12, 2019 8:08 AM
To: Green, Jamie <Green.Jamie@epa.gov>
Subject: AltEn DDG wetcake question

Jamie,

We had a meeting here yesterday about the DDG wetcake soil conditioner issue. As I mentioned to you in past conversations, I called USDA/AMS/LPSP/SRTD, a gentleman by the name of Roger Burton, to find out how the Federal Seed Act plays into the equation, and he told me that they do not enforce any directions for use on the seed label, they only assure the information required to be on the label is accurately displayed by the seed company. Mr. Burton indicated that his program had always believed it was EPA's responsibility to enforce any pesticide language on the seed label.

So the question I need to ask you, and I know I've asked it before, is whether anyone at EPA HQ believes they have any authority to enforce the language I am inserting below, which is found on the seed label.

"Do not use treated seed for feed, food or oil purposes. Excess treated seed may be used for ethanol production only if (1) by-products are not used for livestock feed and (2) no measurable residues of pesticide remain in ethanol by-products that are used for agronomic practice."

Our discussion here believes that if USDA and EPA are unwilling to enforce that label provision under the Federal Seed Act or FIFRA, and it is not mentioned in any state seed, soil conditioner or pesticide law, we may have an issue where the statement is unenforceable and the ethanol company can operate with impunity. On the flip side, our attorney believes we might be able to call it a pesticide due to the sample analysis showing high concentrations of multiple chemicals that have only one use, that being as a pesticide.

Ex. 7(A)

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Please let me know if you can answer the question about EPA being able to enforce the quoted language above – sooner would be better. ;-)

Tim Creger

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